

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 DIANN SOKOLOFF
Deputy Attorney General
4 State Bar No. 161082
JUSTIN SURBER
5 Deputy Attorney General
State Bar No. 226937
6 1515 Clay Street, 20th Floor
P.O. Box 70550
7 Oakland, CA 94612-0550
Telephone: (510) 622-2212
8 Fax: (510) 622-2270
E-mail: Diann.Sokoloff@doj.ca.gov

9 *Attorneys for Complainant*

10 **BEFORE THE**
11 **CALIFORNIA BOARD OF ACCOUNTANCY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

15 **RICHARD LAWRENCE DELAP**
1217 Funston Ave.
16 Pacific Grove, CA 93950

17 **Certified Public Accountant**
18 **Certificate No. CPA 13291**

Case No. AC-2010-9

AMENDED ACCUSATION

19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this Amended Accusation solely in her official
22 capacity as the Executive Officer of the California Board of Accountancy, Department of
23 Consumer Affairs.

24 2. On or about October 20, 1967, the California Board of Accountancy issued Certified
25 Public Accountant Number CPA 13291 to Richard Lawrence DeLap (Respondent). The Certified
26 Public Accountant Certificate was in full force and effect at all times relevant to the charges
27 brought herein and expired on March 1, 2007.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of Section 5100 of the Business and Professions Code, which provides, in relevant part, that, after notice and hearing, the Board may revoke, suspend or refuse to renew any permit or certificate granted for unprofessional conduct which includes, but is not limited to, one or any combination of the causes specified therein, including willful violations of the Accountancy Act and willful violations of rules and regulations promulgated by the Board.

4. Business and Professions Code¹ Sections 118(b) and 5109 provide in pertinent part that the suspension, expiration, cancellation, or forfeiture of a license issued by the Board shall not deprive the Board of its authority to investigate, or to institute or continue a disciplinary proceeding against a licensee upon any ground provided by law, or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

STATUTORY AND REGULATORY PROVISIONS

5. Section 5100 states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

...

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that

¹ All statutory references are to the Business and Professions Code unless otherwise indicated.

1 indicate a lack of competency in the practice of public accountancy or in the performance of the
2 bookkeeping operations described in Section 5052.”

3 ...

4 "(g) Willful violation of this chapter or any rule or regulation promulgated by the
5 board under the authority granted under this chapter.”

6 ...

7 "(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.”

8 “(j) Knowing preparation, publication, or dissemination of false, fraudulent, or
9 materially misleading financial statements, reports, or information.”

10 “(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
11 money, property, or other valuable consideration by fraudulent means or false pretenses.”

12 6. Licensees are required by Title 16, California Code of Regulations, Article 1, Board
13 Rule 5 to comply with all Board rules, including by Title 16, California Code of Regulations,
14 Article 9, Board Rule 58, which provides that licensees engaged in the practice of public
15 accountancy shall comply with all applicable professional standards.

16 7. Business and Professions Code section 125 provides, in pertinent part, that any
17 licensee is guilty of a misdemeanor and subject to the disciplinary provisions of this code
18 applicable to him, who conspires with a non-licensee to violate any provision of this code.

19 APPLICABLE PROFESSIONAL STANDARDS

20 8. Professional standards or standards of practice pertinent² to this Accusation include,
21 without limitation:

22 A. Title 31, Part 10 of Internal Revenue Service (IRS) Regulations (31 CFR 10)³
23 including:

24 (1) Section 10.21 (Knowledge of Client’s Omission), provides that:

26 ² All references herein to standards and other authoritative literature are to the versions in
27 effect at the time the shelters were being developed, marketed or sold.

28 ³ 31 CFR 10 is also referred to as “Circular 230” or Section 10 of the IRS Regulations.
Among other things, Circular 230 governs practice by CPAs before the IRS.

1 “[a] practitioner who, having been retained by a client with respect to a matter
2 administered by the Internal Revenue Service, knows that the client has not
3 complied with the revenue laws of the United States or has made an error or
4 omission from any return, document, affidavit, or other paper which the client
5 submitted or executed under the revenue laws of the United States, must advise the
6 client promptly of the fact of such noncompliance, error, or omission. The
7 practitioner must advise the client of the consequences as provided under the Code
8 and regulations of such noncompliance, error, or omission.”

9 (2) Section 10.22(a) (Diligence as to Accuracy), provides that, in general, a
10 practitioner must exercise due diligence:

11 “(1) In preparing or assisting in the preparation of, approving, and filing tax
12 returns, documents, affidavits, and other papers relating to Internal Revenue
13 Service matters;

14 (2) In determining the correctness of oral or written representations made by the
15 practitioner to the Department of the Treasury; and

16 (3) In determining the correctness of oral or written representations made by the
17 practitioner to clients with reference to any matter administered by the Internal
18 Revenue Service.”

19 (3) Section 10.30 (Solicitation), provides that a practitioner may not, with
20 respect to any Internal Revenue Service matter, in any way use or participate in the use of any
21 form or public communication or private solicitation containing a false, fraudulent, or coercive
22 statement or claim; or a misleading or deceptive statement or claim.

23 (4) Section 10.34 (Standards for Advising with Respect to Tax Return Positions
24 and for Preparing or Signing Returns), provides that a practitioner may not sign a tax return as a
25 preparer if the practitioner determines that the tax return contains a position that does not have a
26 realistic possibility of being sustained on its merits (the “realistic possibility standard”) unless the
27 position is not frivolous and is adequately disclosed to the Internal Revenue Service.

28 B. American Institute of Certified Public Accountants (AICPA) Code of
Professional Conduct, includes Section I - Principles and Section II - Rules. Both the Principles
(Articles III and VI) and the Rules are relevant to the allegations herein.

(1) Rule 102 (Integrity and Objectivity), provides that:

1 "In the performance of any professional service, a member shall maintain objectivity
2 and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts or
3 subordinate his or her judgment to others."

4 (2) Rule 102.2 (Conflicts of Interest), provides that:

5 "A member shall be considered to have knowingly misrepresented facts in violation of rule
6 102. . . when he or she knowingly—

7 a. Makes, or permits or directs another to make, materially false and
8 misleading entries in an entity's financial statements or records; or

9 b. Fails to correct an entity's financial statements or records that are
10 materially false and misleading when he or she has the authority to record an entry; or

11 c. Signs, or permits or directs another to sign, a document containing
12 materially false and misleading information."

13 (3) Rule 102-4 (Subordination of Judgment by a Member), provides that:

14 "Rule 102 [ET section 102.01] prohibits a member from knowingly misrepresenting facts
15 or subordinating his or her judgment when performing professional services. Under this rule, if a
16 member and his or her supervisor have a disagreement or dispute relating to the preparation of
17 financial statements or the recording of transactions, the member should take the following steps
18 to ensure that the situation does not constitute a subordination of judgment:

19 "1. The member should consider whether (a) the entry or the failure to record
20 a transaction in the records, or (b) the financial statement presentation or the nature or omission of
21 disclosure in the financial statements, as proposed by the supervisor, represents the use of an
22 acceptable alternative and does not materially misrepresent the facts. If, after appropriate research
23 or consultation, the member concludes that the matter has authoritative support and/or does not
24 result in a material misrepresentation, the member need do nothing further.

25 2. If the member concludes that the financial statements or records could be
26 materially misstated, the member should make his or her concerns known to the appropriate
27 higher level(s) of management within the organization (for example, the supervisor's immediate
28 superior, senior management, the audit committee or equivalent, the board of directors, the

1 company's owners). The member should consider documenting his or her understanding of the
2 facts, the accounting principles involved, the application of those principles to the facts, and the
3 parties with whom these matters were discussed.

4 3. If, after discussing his or her concerns with the appropriate person(s) in
5 the organization, the member concludes that appropriate action was not taken, he or she should
6 consider his or her continuing relationship with the employer. The member also should consider
7 any responsibility that may exist to communicate to third parties, such as regulatory authorities or
8 the employer's (former employer's) external accountant. In this connection, the member may wish
9 to consult with his or her legal counsel.

10 4. The member should at all times be cognizant of his or her obligations
11 under interpretation 102-3 [ET section 102.04]."

12 (4) Rule 201 (General Standards), provides that:

13 "A member shall comply with the following standards and with any interpretations thereof
14 by bodies designated by Council.

15 A. Professional Competence. Undertake only those professional services that
16 the member or the member's firm can reasonably expect to be completed with professional
17 competence.

18 B. Due Professional Care. Exercise due professional care in the performance
19 of professional services.

20 C. Planning and Supervision. Adequately plan and supervise the performance
21 of professional services.

22 D. Sufficient Relevant Data. Obtain sufficient relevant data to afford a
23 reasonable basis for conclusions or recommendations in relation to any professional services
24 performed."

25 (5) Rule 202 (Compliance With Standards), provides that:

26 "A member who performs auditing, review, compilation, management consulting, tax, or
27 other professional services shall comply with standards promulgated by bodies designated by
28 Council."

1 (6) Rule 501 (Acts discreditable), provides that:

2 "A member shall not commit an act discreditable to the profession."

3 (7) Rule 501-4 (Negligence in the Preparation of Financial Statements or
4 Records), provides that:

5 "A member shall be considered to have committed an act discreditable to the profession in
6 violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such
7 member—

8 a. Makes, or permits or directs another to make, materially false and
9 misleading entries in the financial statements or records of an entity; or

10 b. Fails to correct an entity's financial statements that are materially
11 false and misleading when the member has the authority to record an entry; or

12 c. Signs, or permits or directs another to sign, a document containing
13 materially false and misleading information."

14 (8) Rule 502 (Advertising and Other Forms of Solicitation), provides that: "A
15 member in public practice shall not seek to obtain clients by advertising or other forms of
16 solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion,
17 over-reaching, or harassing conduct is prohibited."

18 (9) Rule 502-2 (False, Misleading or Deceptive Acts in Advertising or
19 Solicitation), provides that:

20 "Advertising or other forms of solicitation that are false, misleading, or deceptive are not in
21 the public interest and are prohibited. Such activities include those that—

22 1. Create false or unjustified expectations of favorable results.

23 2. Imply the ability to influence any court, tribunal, regulatory agency, or
24 similar body or official.

25 3. Contain a representation that specific professional services in current
26 or future periods will be performed for a stated fee, estimated fee or fee range when it was likely
27 at the time of the representation that such fees would be substantially increased and the
28 prospective client was not advised of that likelihood.

1 4. Contain any other representations that would be likely to cause a
2 reasonable person to misunderstand or be deceived.”

3 C. AICPA Statements on Standards for Tax Services⁴, including:

4 (1.) TS Section 100 - Tax Return Positions.

5 (2.) TS Section 600 - Knowledge of Error: Return Preparation.

6 (3.) TS Section 800 - Form and Content of Advice to Tax Payers.

7 D. The Internal Revenue Code, including:

8 “(1) 26 U.S.C. §6111 (Section 6111), which governs the registration of tax
9 shelters.

10 (2) 26 U.S.C. §6112 (Section 6112), which imposes certain obligations on the
11 organizer or seller of a “potentially abusive tax shelter.”

12 COST RECOVERY

13 9. Code Section 5107(a) provides, in pertinent part, that the Executive Officer of the
14 Board may request the administrative law judge, as part of the proposed decision in a disciplinary
15 proceeding, to direct any holder of a permit or certificate found to have committed a violation or
16 violations of the Accountancy Act to pay to the Board all reasonable costs of investigation and
17 prosecution of the case, including, but not limited to, attorneys' fees incurred prior to the
18 commencement of the hearing. A certified copy of the actual costs, or a good faith estimate of
19 costs signed by the Executive Officer, constitutes prima facie evidence of reasonable costs of
20 investigation and prosecution of the case.

21 PUBLIC PROTECTION

22 10. Code Section 5000.1 provides, as follows: “Protection of the public shall be the
23 highest priority for the California Board of Accountancy in exercising its licensing, regulatory,
24 and disciplinary functions. Whenever the protection of the public is inconsistent with other
25 interests sought to be promoted, the protection of the public shall be paramount.”

26
27 ⁴ The AICPA *Statements on Standards for Tax Services*, are codified as “TS” with section
28 numbers, e.g., TS Section 100.

FACTUAL BACKGROUND

11. The subject matter of this Accusation is Respondent's participation in the development, promotion, and implementation of certain tax shelter schemes by himself and other KPMG⁵ personnel, including senior partners and members of top management, which assisted high net worth United States citizens to evade United States individual income taxes on billions of dollars in capital gain and ordinary income through the use of unregistered and fraudulent tax shelters.^{6, 7}

12. Respondent was an employee of KPMG LLP⁸ from at least in or about 1966 (when the company used the name Peat, Marwick, Mitchell & Company) through in or about 2002, working in the Los Angeles, San Francisco, New York and San Jose Offices. In 1974, Respondent became a partner and was transferred from the Los Angeles KPMG office to the San Francisco KPMG office. Respondent was transferred to the San Jose office where he became National Partner in charge of Information, Communications, and Entertainment. In 1997, Respondent became Partner in charge of the newly created Department of Professional Practice-

⁵ At all times relevant to this Accusation, KPMG was a limited liability partnership headquartered in New York, New York, with more than 90 offices nationwide, of which several are in California. Among the California KPMG offices during the time period relevant herein were offices in Los Angeles, Woodland Hills, San Diego, San Francisco, and Walnut Creek. KPMG was one of the largest auditing firms in the world, providing audit services to many of the largest corporations in the United States and elsewhere. KPMG also provided tax services to corporate and individual clients, some of whom were very wealthy. These tax services included, but were not limited to, preparing federal and state tax returns, providing tax planning and tax advice, and representing clients, for example, in Internal Revenue Service ("IRS") and Franchise Tax Board ("FTB") audits, and in Tax Court litigation with the IRS.

⁶ The portion of KPMG's tax practice that specialized in providing tax advice to individuals, including wealthy individuals, was known as Personal Financial Planning, or "PFP." The KPMG group focused on designing, marketing, and implementing tax shelters for individual clients was known at different times as CaTS ("Capital Transaction Strategies"), and IS ("Innovative Strategies").

⁷ KPMG personnel also formed alliances, operating agreements, and/or joint ventures with outside persons, including former partners, employees, and others. KPMG also worked with law firms/lawyers and with banks in implementing the FLIP, OPIS and BLIPS tax shelter transactions. Significant activity and coordination regarding the design and implementation of the tax shelters took place by California licensees or on behalf of California taxpayers.

⁸ KPMG LLP ("KPMG") was, at all times relevant, licensed by the Board and operating several offices in California. KPMG was engaged in providing tax services to corporate and individual clients and providing audit services to corporate, governmental and other clients. The Board's related action against KPMG, Accusation No. AC-2006-28, was resolved effective January 18, 2008. It is further referenced in paragraph 13.

1 Tax (DPP-Tax). As head of DPP-Tax, Respondent was responsible for overseeing and giving
2 advice on professional practice issues affecting KPMG's tax related practice. Respondent was
3 responsible for ensuring KPMG's compliance with Internal Revenue Service, SEC, and AICPA
4 rules and regulations. Respondent was responsible for ensuring KPMG's compliance with state
5 accountancy board's rules and regulations. Respondent was personally responsible for ensuring
6 the tax shelters, described below, complied with the applicable laws and regulations. The tax
7 shelters required Respondents' approval to be marketed.

8 13. Board Case No. AC-2006-28, filed against KPMG, incorporated the Statement of
9 Facts attached to the Deferred Prosecution Agreement ("DPA") which KPMG entered with the
10 federal government, in or about August 26, 2005. In resolving Case No. AC-2006-28 with the
11 Board, KPMG admitted and accepted that, as set forth in detail in the Statement of Facts attached
12 to the DPA (which was incorporated into Accusation AC-2006-28),

13 "through the conduct of certain KPMG tax leaders, partners, and employees,
14 during the period from 1996 through 2002, KPMG assisted high net worth
15 individuals to evade individual income taxes on billions of dollars by developing,
16 promoting, and implementing unregistered and fraudulent tax shelters. A number
of KPMG tax partners engaged in conduct that was unlawful and fraudulent...".
(Accusation, Paragraph 57, quoting DPA.)⁹

17 A copy of the DPA agreement and Statement of Facts is attached as Exhibit A and is
18 herein incorporated by reference.

19 14. Respondent was a tax partner at KPMG between 1974 and 2002, the period relevant
20 herein. He participated in the above-described scheme, consisting of:

- 21 A. devising, marketing, and implementing fraudulent tax shelters;
- 22 B. causing tax returns to be filed with the IRS that contained the fraudulent tax
23 shelter losses; and
- 24 C. fraudulently concealing those shelters from the IRS.

25
26
27 ⁹ See paragraphs 50-55 of Accusation AC-2006-28 and attachment, and paragraphs 9-11
28 of Stipulation AC-2006-28 for detail.

FLIP, OPIS, and BLIPS TAX SHELTERS

15. The fraudulent tax shelter transactions which are the subject matter of this Accusation were FLIP ("Foreign Leveraged Investment Program"), OPIS ("Offshore Portfolio Investment Strategy"), and BLIPS ("Bond Linked Issue Premium Structure").¹⁰

16. Respondent was highly involved in the creation and/or approval of the BLIPS, FLIP,¹¹ and OPIS¹² transactions.

17. The law in effect from at least in or about August 1997 provided that if a taxpayer claimed a tax benefit that was later disallowed, the IRS could impose substantial penalties, ranging from 20%-40% of the underpayment of tax attributable to the shelter, unless the tax benefit was supported by an independent opinion relied on by the taxpayer in good faith that the tax benefit was "more likely than not" to survive IRS challenge.

FLIP and OPIS SHELTERS

18. In most material respects, FLIP and OPIS were the same. FLIP and OPIS were generally marketed only to people who had capital gains in excess of \$10 million for FLIP and \$20 million for OPIS.¹³

¹⁰ During the relevant time period, KPMG personnel, some of its clients, and others involved in these tax shelter transactions prepared, signed and filed tax returns that falsely and fraudulently claimed over \$4.2 billion in bogus tax losses generated by FLIP and OPIS transactions, and \$5.1 billion generated by BLIPS transactions. A significant proportion of the tax payers who filed tax returns with KPMG's assistance using FLIP, OPIS and BLIPS tax shelters were California taxpayers. Approximately 29% of the transactions were in California and approximately 38% of KPMG's fees originated in California.

¹¹ FLIP was essentially similar to OPIS. The shelters were designed to generate bogus capital losses in excess of \$20 million through the use of an entity created in the Cayman Islands. The client purportedly entered into an "investment" transaction with the Cayman Islands entity by purchasing a purported warrant or entering into a purported swap. The Cayman Islands entity purportedly made a pre-arranged series of investments, including the purchase, from a bank, of bank stock using money purportedly loaned by the bank, followed by a repurchase of that stock by the pertinent bank at a prearranged price. The tax shelter transactions were devised to last for only approximately 16 to approximately 60 days, and the duration of the shelter was pre-determined.

¹² OPIS was essentially similar to FLIP, described in the footnote above. KPMG's gross fees from OPIS transactions were at least \$28 million.

¹³ In return for fees totaling approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, KPMG, its KPMG tax personnel and their associates implemented and caused to be implemented FLIP and OPIS transactions and generated and caused to be generated false and fraudulent documentation to support the transactions, including but not limited to KPMG opinion letters claiming that the purported tax losses generated by the shelters were "more likely than not" to withstand challenge by the IRS.

(continued...)

1 19. Respondent was highly involved in FLIP and OPIS transactions. As Head of DPP-
2 Tax, Respondent was responsible for reviewing both the FLIP and OPIS transactions for
3 compliance with the applicable professional and tax standards. Respondent gave the approvals
4 for KPMG's tax professionals to market or continue to market the FLIP and OPIS transactions.
5 Respondent also decided when KPMG tax professionals could no longer market these products.
6 Respondent reviewed, edited and approved generic drafts of engagement letters, client factual
7 representations letters, and tax opinions for the FLIP and OPIS transactions. The generic drafts
8 approved by Respondent were then used by other KPMG tax professionals as templates for real
9 engagement letters, client factual representations, and tax opinions. The FLIP and OPIS opinion
10 letters falsely asserted that tax positions taken were "more likely than not" to prevail against an
11 IRS challenge if the true facts regarding those transactions were known to the IRS. The opinion
12 letters and other documents used to implement FLIP and OPIS were false and fraudulent in a
13 number of ways, including that:

14 a. Money was paid by the FLIP and OPIS clients for an "investment" component
15 of the transactions (a warrant or a swap), whereas in fact that money constituted fees paid to
16 KPMG and other participants, as well as money that was temporarily "parked" in the deal but
17 ultimately returned to the client.

18 b. There was no evidence of a "firm and fixed" plan to complete the steps making
19 up the shelter in a particular manner when, in fact, there was such a plan, and the transactions in
20 fact were designed to be completed, and were completed, in the particular manner designed to
21 generate the tax loss.

22 c. The clients were not "more likely than not" to survive an IRS challenge (based
23 on the "step transaction doctrine").¹⁴

24
25 (...continued)

26 As agreed to, and arranged by, KPMG tax personnel, outside lawyers also issued "more likely
27 than not" opinion letters in return for fees typically of approximately \$50,000 per opinion, which
28 opinions tracked, sometimes verbatim, the KPMG opinion letter.

¹⁴ The "step transaction doctrine" is a legal doctrine permitting the IRS to disregard
certain transactions having no economic substance or business purpose and the purported tax
effects of those disregarded transactions.

BLIPS SHELTER

20. KPMG and its tax personnel and associates marketed and caused to be marketed, and implemented and caused to be implemented the transactions, and generated and caused to be generated false and fraudulent documentation to support the BLIPS transactions. This activity included, but was not limited to, generating KPMG opinion letters (and opinion letters by law firm(s)) that claimed that the purported tax losses generated by the shelters were more likely than not to withstand challenge by the IRS. All of these opinion letters were almost identical.

21. Respondent was highly involved in the BLIPS¹⁵ transactions. As head of DPP Tax, Respondent was responsible for reviewing the BLIPS transactions and supporting documents for compliance with professional and tax standards. Respondent was involved in reviewing and editing the generic draft BLIPS engagement letters, tax opinions, and client factual representations. These documents were used as templates for actual BLIPS engagement letters, tax opinions, and client factual representations. All of these opinion letters were almost identical. Respondent approved BLIPS for marketing and implementation by KPMG tax professionals. Respondent also decided when KPMG professionals were no longer allowed to market and implement BLIPS. The documents reviewed, edited, and approved by Respondent falsely and fraudulently claimed that the purported tax losses generated by the BLIPS transactions were "more likely than not" to withstand challenge by the IRS.

22. Respondent reviewed, edited, and approved the BLIPS opinion letters and related documents although he knew or should have known that (i) the tax positions taken were not "more likely than not" to prevail against an IRS challenge if the true facts regarding those transactions were known to the IRS, and (ii) the opinion letters and other documents used to implement BLIPS were false and fraudulent in a number of ways, including but not limited to the following:

¹⁵ BLIPS generated at least \$5.1 billion in bogus tax losses. KPMG's gross fees from BLIPS transactions were at least \$53 million. Associated law firms and boutique practices had gross fees of at least \$147 million. The fees totaled approximately 5-7% of the desired tax loss, including a fee to KPMG equal to approximately 1-1.25% of the desired tax loss, a fee to a "boutique practice" equal to approximately 2.75% of the desired tax loss, and a fee to a law firm generally equal to \$50,000 per transaction.

1 a. BLIPS was falsely described as a three-stage, seven-year investment program,
2 when in truth and in fact, all participants were expected to withdraw at the earliest opportunity
3 and within the same tax year in order to obtain their tax losses. BLIPS was falsely described as a
4 "leveraged" investment program, whereas, in fact, the purported loan transactions that were part
5 of BLIPS (and that were the aspect of BLIPS that purported to generate the tax loss) were shams -
6 - no money ever left the bank and none of the banks assigned any capital cost to these purported
7 BLIPS loans.

8 b. The BLIPS opinion letters falsely stated that the client (based on the client's
9 purported "independent review," as well as that of outside "reviewers") "believed there was a
10 reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions," when
11 in truth and in fact, there was no "reasonable likelihood of earning a reasonable pre-tax profit"
12 from BLIPS, and instead the "investment" component of BLIPS was negligible, unrelated to the
13 large sham "loans" that were the key elements of the purported tax benefits of BLIPS, and was
14 simply window dressing for the BLIPS tax shelter fraud.

15 c. The opinion letters and other documents were misleading in that they were
16 drafted to create the false impression that KPMG, its tax personnel, and others associated with the
17 tax shelter scheme were all independent service providers and advisors, when in truth and in fact
18 KPMG personnel and associates jointly developed and marketed the BLIPS shelter.

19 23. At various points during the development of BLIPS, KPMG tax personnel identified
20 various significant defects of BLIPS, including that the description of BLIPS and the factual
21 representations contained in the BLIPS opinion letter and in other documents were false.
22 Nevertheless, in or about 1999, the marketing of BLIPS by the firm was approved by Respondent.
23 Likewise, the risks of proceeding with implementation of BLIPS in 2000 were discussed. Despite
24 the obviously fraudulent nature of BLIPS and the warnings conveyed, KPMG tax personnel,
25 including Respondent, decided not to refund BLIPS fees and to proceed with the issuance of
26 "more likely than not" opinion letters on all of the 1999 transactions with the intent that BLIPS
27 clients would claim the bogus BLIPS losses on 1999 tax returns. KPMG tax personnel and
28

1 others, including Respondent, continued to be involved in the implementation of more BLIPS tax
2 shelter transactions in 2000 and, in 2001.

3 **FRAUDULENT CONCEALMENT OF TAX SHELTERS**

4 24. In addition to preparing, causing to be prepared, and approving the false and
5 fraudulent documentation relating to and implementing the shelter transactions, Respondent
6 participated in steps taken to fraudulently conceal from the IRS the fraudulent tax shelters, and/or
7 knew or should have known that the steps would have the effect of concealing the shelters from
8 the IRS. The steps taken included, but were not limited to, the following:

9 (1) Not registering the tax shelters with the IRS as required by law. Respondent
10 personally concluded that FLIP, OPIS, and BLIPS transactions should have been registered yet
11 nevertheless agreed with and approved the decision not to register FLIP, OPIS, and BLIPS.

12 (2) Respondent knowingly allowed tax professionals at KPMG to prepare tax
13 returns that fraudulently concealed the bogus losses from the IRS. Specifically Respondent knew
14 KPMG tax professionals were using a device called "grantor trust netting" to conceal the tax
15 shelters from the IRS. Respondent was informed that the use of grantor trust netting on tax
16 returns could be viewed as filing a false or misleading return. Despite being head of DPP-tax
17 Respondent did not analyze the appropriateness of using grantor trust netting.

18 **FAILING TO REGISTER TAX SHELTERS**

19 25. Under the law in effect at all times relevant to this Accusation, an organizer of a tax
20 shelter was required to "register" the shelter by filing a form with the IRS describing the
21 transaction. The IRS in turn would issue a number to the shelter, and all individuals or entities
22 claiming a benefit from the shelter were required to include with their income tax returns a form
23 disclosing that they had participated in a registered tax shelter, and disclosing the assigned
24 registration number. Notwithstanding these legal requirements, KPMG's tax personnel decided
25 not to register the tax shelters based on a "business decision" that to register the shelters would
26 hamper KPMG's ability to sell them. Respondent knew or should have known of the requirement
27 to register the shelters. In fact, Respondent personally concluded that FLIP, OPIS, and BLIPS
28

1 transactions should have been registered yet nevertheless agreed with and approved the decision
2 not to register the FLIP, OPIS, and BLIPS transactions.

3 **FIRST CAUSE FOR DISCIPLINE**
4 **Fraud in the Practice of Public Accountancy**
5 **[Business and Professions Code § 5100(c)]**

6 26. The matters alleged in paragraphs 11 through 25 are re-alleged as though fully set
7 forth.

8 27. Respondent's license is therefore subject to disciplinary action based on his direct
9 involvement and acquiescence in:

10 A. The decision of KPMG not to register the tax shelters as required;

11 B. The preparation and approval of false or fraudulent documentation supporting
12 the implementation of the tax shelters; and/or

13 C. Respondent's explicit and required approval of KPMG's marketing and
14 implementation of the tax shelters including, but not limited to, Respondent's approval of
15 allowing KPMG's personnel to sign the tax opinions and tax returns containing the fraudulent tax
16 shelters.

17 28. Incorporating by reference the matters alleged in paragraphs 11-25, cause for
18 discipline of Respondent's license for fraud in the practice of public accountancy is established
19 under Code Section 5100(c).

20 **SECOND CAUSE FOR DISCIPLINE**
21 **Dishonesty in the Practice of Public Accountancy**
22 **[Business and Professions Code § 5100(c)]**

23 29. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters
24 by reference, cause for discipline of Respondent's license for dishonesty in the practice of public
25 accountancy is established under Code Section 5100(c) based upon his dishonest acts, and
26 omissions in the course of his participation, as described above, in the FLIP, BLIP, and OPIS tax
27 shelters.

28 **THIRD CAUSE FOR DISCIPLINE**
29 **Gross Negligence in the Performance of Public Accountancy**
30 **[Business and Professions Code § 5100(c)]**

31 30. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters

1 by reference, cause for discipline of Respondent's license for gross negligence in the practice of
2 public accountancy is established under Code Section 5100(c) based upon his conduct, which
3 constituted extreme departures from applicable professional standards.

4 **FOURTH CAUSE FOR DISCIPLINE**
5 **Failure to Observe Professional Standards in Performance of Public Accountancy**
6 **[Board Rule 58/ Business and Professions Code § 5100(g)]**

7 31. Complainant realleges paragraphs 11 through 25. Incorporating those matters by
8 reference, cause for discipline of Respondent's license is established in that his failure to comply
9 with professional standards applicable to public accountancy constitutes the willful violation of
10 Board Rule 58, providing cause for discipline of his license under Code Section 5100(g).

11 **FIFTH CAUSE FOR DISCIPLINE**
12 **Repeated Negligent Acts in the Performance of Public Accountancy**
13 **[Business and Professions Code § 5100(c)]**

14 32. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters
15 by reference, cause for discipline of Respondent's license for repeated negligent acts in the
16 performance of public accountancy is established under Code Section 5100(c) based upon his
17 conduct, which constituted repeated departures from applicable professional standards.

18 **SIXTH CAUSE FOR DISCIPLINE**
19 **Violation of Professional Standards**
20 **[Board Rule 58/ Business and Professions Code § 5100(g)]**

21 33. Complainant realleges paragraphs 11 through 25 above. Incorporating those matters
22 by reference, cause for discipline of Respondent's license for violation of professional standards
23 is established under Board Rule 58 and Code Section 5100(g) based upon his conduct, including
24 approving and causing to be signed, engagement and opinion letters for clients without
25 independently, diligently or accurately evaluating the specific needs and concerns of the clients,
26 which constitutes willful violation of Board Rule 58, providing cause for discipline of his license
27 under Code section 5100(g).

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PRAYER

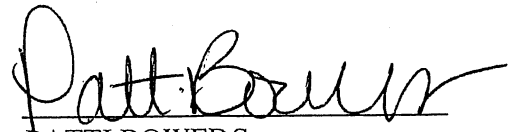
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant Number 13291, issued to Richard Lawrence DeLap.

2. Ordering Richard Lawrence DeLap to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

Dated: January 28, 2010



PATTI BOWERS
Executive Officer
California Board of Accountancy

Complainant

SF2006401547